Safari Alliance Sdn Bhd v Tiger Synergy Bhd and another case

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NOS WA-24NCC-67–02 OF 2020 AND WA-24NCC-74–02 OF 2020
ONG CHEE KWAN JC
1 MARCH 2020

Companies and Corporations — Meetings — Extraordinary General Meeting — Competing meeting — Whether plaintiff's right to convene members' meeting was taken away by defendant — Whether there was improper exercise of powers defendant's board of directors — Whether defendant's extraordinary general meeting ought to be restrained — Companies Act 2016 ss 206(3), 310(b) & 322(1)

Safari Alliance Sdn Bhd ('Safari') held 11.834% of the issued shares of Tiger Synergy Bhd ('Tiger Synergy'). On 2 January 2020, Safari gave notice to Tiger Synergy of its intention to move resolutions to, inter alia, remove certain directors and to reconstitute the board of directors of Tiger Synergy ('the Safari special notice') pursuant to s 206(3) of the Companies Act 2016 ('CA 2016'). In the Safari special notice, Safari indicated that the general meeting wherein the resolutions would be moved would be convened on 2 March 2020 ('Safari EGM'). Safari also issued the notice of extraordinary general meeting ('Safari notice of EGM') of Tiger Synergy, and attached to it were the resolutions and the consents and profiles of the five candidates who sought to be appointed as directors of Tiger Synergy at the Safari EGM. However, on 20 January 2020, Tiger Synergy issued a letter to Safari stating, inter alia, that Tiger Synergy's board of directors had decided to convene a competing EGM on 20 February 2020 where the resolutions that would be tabled thereto would be the Safari resolutions with two additional resolutions (the Safari resolutions and the additional resolutions were collectively referred to as 'the Tiger Synergy resolutions'). On 21 January 2020, Tiger Synergy issued its notice of general meeting for the Tiger Synergy EGM to be convened on 20 February 2020 ('the Tiger Synergy notice of EGM'). On 11 February 2020, Safari filed an action under OS 67 seeking, inter alia, a declaration that the Tiger Synergy notice of EGM was invalid, a declaration that the Tiger Synergy EGM, if convened, would be invalid and void and an injunction to restrain Tiger Synergy from taking any further steps in respect of the Tiger Synergy notice of EGM. On the same day, Safari filed an interlocutory application under encl 2 in OS 67 seeking to restrain the Tiger Synergy EGM. Tiger Synergy had, in turn, filed an action under OS 74 seeking, inter alia, a declaration that Safari notice of EGM to convene the Safari EGM was redundant, invalid and/or null and void and for an order that Safari be restrained from proceeding with the Safari EGM.

Held, granting OS 67 and dismissing OS 74:

(1) Once a members' meeting was convened under s 310(b) of the CA 2016, the company should not be taking any action to interfere with the meeting. Tiger Synergy's board of directors' decision to call the competing Tiger Synergy EGM had the effect of taking away or rendering impotent Safari's exercise of its statutory right under s 310(b) of the CA 2016 to convene a members' meeting (see paras 26 & 34).

(2) The decision by Tiger Synergy to call the Tiger Synergy EGM was a clear and blatant improper exercise of powers by its board of directors. The board of directors of Tiger Synergy in calling for the Tiger Synergy EGM had indeed exercised their powers for an improper purpose and that the Tiger Synergy notice of EGM was made mala fide rendering the convening of the Tiger Synergy EGM invalid (see paras 35 & 39).

(3) The Tiger Synergy EGM ought to be restrained as there was no special notice of intention to move the Tiger Synergy resolutions at the Tiger Synergy EGM as required under s 206(3) of the CA 2016. The Safari special notice could not in law be relied upon by the board of directors of Tiger Synergy to move the Tiger Synergy resolutions at a meeting fixed on a different date, venue and time as it was a special notice of intention given for only the meeting convened on 2 March 2020. The Tiger Synergy resolutions to be tabled at the Tiger Synergy EGM were also not identical to the Safari resolutions given in the Safari special notice. Accordingly, under s 322(1) of the CA 2016, the Tiger Synergy resolutions would not be effective as the same would not be properly moved at the Tiger Synergy EGM rendering the said meeting futile and a waste of the company resources (see paras 40, 42 & 43).

[Bahasa Malaysia summary

Safari Alliance Sdn Bhd ('Safari') memegang 11.834% saham yang diterbitkan Tiger Synergy Bhd ('Tiger Synergy'). Pada 2 Januari 2020, Safari memberi notis Tiger Synergy tentang niatnya untuk membangkitkan resolusi untuk, antara lain, memecat pengarah tertentu dan untuk membentuk kembali lembaga pengarah Tiger Synergy ('notis khas Safari') berdasarkan s 206(3) Akta Syarikat 2016 ('Akta 2016'). Dalam notis khas Safari, Safari mengatakan bahawa mesyuarat agung di mana resolusi akan diputuskan akan diadakan pada 2 Mac 2020 ('EGM Safari'). Safari juga mengeluarkan notis mesyuarat agung luar biasa ('notis EGM Safari') Tiger Synergy, dan dilampirkan adalah resolusi dan persetujuan dan profil dari lima calon yang ingin dilantik sebagai pengarah Tiger Synergy di Safari EGM. Namun, pada 20 Januari 2020, Tiger Synergy mengeluarkan surat kepada Safari yang menyatakan, antara lain, bahawa lembaga pengarah Tiger Synergy telah memutuskan untuk mengadakan EGM bersaing pada 20 Februari 2020 di mana resolusi yang akan dibentangkan adalah resolusi Safari dengan dua resolusi tambahan (resolusi

Safari dan resolusi tambahan secara kolektif disebut sebagai 'resolusi Tiger Synergy'). Pada 21 Januari 2020, Tiger Synergy mengeluarkan notis mesyuarat agungnya untuk EGM Tiger Synergy yang akan diadakan pada 20 Februari 2020 ('notis EGM Tiger Synergy'). Pada 11 Februari 2020, Safari memfailakn tindakan di bawah OS 67 yang menuntut, antara lain, pengisytiharan bahawa notis EGM Tiger Synergy tidak sah, pengisytiharan bahawa EGM Tiger Synergy, jika diadakan, tidak sah dan batal dan perintah untuk menahan Tiger Synergy mengambil langkah lebih jauh berkenaan dengan notis EGM Tiger Synergy. Pada hari yang sama, Safari memfailkan permohonan interlokutori di bawah lampiran 2 di OS 67 yang bertujuan untuk menahan EGM Tiger Synergy. Tiger Synergy, membalas, telah memfailkan tindakan di bawah OS 74 yang memohon, antara lain, pengisytiharan bahawa notis EGM Safari untuk mengadakan EGM Safari adalah berlebihan, tidak sah dan/atau batal dan terbatal dan untuk perintah agar Safari dihalang dari meneruskan dengan EGM Safari.

Diputuskan, membenarkan OS 67 dan menolak OS 74:

(1) Setelah mesyuarat ahli diadakan di bawah s 310(b) Akta 2016, syarikat tersebut tidak boleh mengambil tindakan untuk mengganggu mesyuarat. Keputusan lembaga pengarah Tiger Synergy untuk memanggil EGM Tiger Synergy yang bersaing mempunyai kesan mengambil atau menjadikan Safari tidak berdaya menjalankan hak undang-undangnya di bawah s 310(b) Akta 2016 untuk mengadakan mesyuarat ahli (lihat perenggan 26 & 34).

(2) Keputusan oleh Tiger Synergy untuk memanggil EGM Tiger Synergy adalah pelaksanaan salah kuasa yang jelas dan terang-terangan oleh lembaga pengarahnya. Lembaga pengarah Tiger Synergy memanggil EGM Tiger Synergy memang menggunakan kuasa mereka untuk tujuan yang tidak betul dan bahawa notis EGM Tiger Synergy dibuat mala fide sehingga menjadikan mesyuarat EGM Tiger Synergy tidak sah (lihat perenggan 35 & 39).

(3) EGM Tiger Synergy seharusnya dihalang kerana tidak ada notis khas niat untuk membangkitkan resolusi Tiger Synergy di EGM Tiger Synergy seperti yang dipersyaratkan di bawah s 206(3) Akta 2016. Notis khas Safari tidak dapat dalam undang-undang diandalkan oleh lembaga pengarah Tiger Synergy untuk membangkitkan resolusi Tiger Synergy dalam mesyuarat yang ditetapkan pada tarikh, tempat dan waktu yang berbeza kerana ia merupakan notis khas niat yang diberikan hanya untuk mesyuarat yang diadakan pada 2 Mac 2020. Resolusi Tiger Synergy yang akan dibentangkan di EGM Tiger Synergy juga tidak sama dengan resolusi Safari yang diberikan dalam notis khas Safari. Dengan demikian, di bawah s 322(1) Akta 2016, resolusi Tiger Synergy tidak akan berkesan kerana perkara yang sama tidak akan dibentangkan dengan tepat di

EGM Tiger Synergy menjadikan mesyuarat tersebut sia-sia dan pembaziran sumber syarikat (lihat perenggan 40, 42 & 43).]

Cases referred to

Adams v Adhesives Pty Ltd (1932) 32 SR (NSW) 398 (refd)
Ariadne Australia Ltd, Re; sub nom Ariadne Australia Ltd, Re; Votraint No 255 Ltd v Capp (ACSR), Ariadne Australia Ltd, Re; Votraint No 255 Ltd v Capp (ACLC) (1990) 2 ACSR 791, SC (refd)
Cannon v Trask (1875) LR 20 Eq 669 (refd)
Howard v Mechtler (1999) 30 ACSR 434, SC (refd)
Seacera Group Berhad v Dato' Tan Wei Lian & Ors [2019] MLJU 470; [2019] 4 AMR 491, HC (refd)

Legislation referred to

Companies Act 2016 ss 206, 206(3), 310(b), 322(1),

Mak Lim Kum (Himahlini Ramalingam and Henry Ngok Heng Hui with him) (Himahlini and Loh) in Originating Summons No WA-24NCC-67–02 of 2020 for the plaintiff.
Alvin Tan (Tan Yang Qian with him) (Bodipalar Ponnudurai De Silva) in Originating Summons No WA-24NCC-74–02 of 2020 for the plaintiff.
Alvin Tan (Tan Yang Qian with him) (Bodipalar Ponnudurai De Silva) in Originating Summons No WA-24NCC-67–02 of 2020 for the defendant.
Mak Lim Kum (Himahlini Ramalingam and Henry Ngok Heng Hui with him) (Himahlini and Loh) in Originating Summons No WA-24NCC-74–02 of 2020 for the defendant.

Ong Chee Kwan JC:

INTRODUCTION

[1] Section 310(b) of the Companies Act 2016 ('the CA 2016') stipulates that any member holding at least 10% of the issued share capital of a company or a lower percentage as specified in the constitution or if the company has no share capital, by at least 5% in the number of the members may convene a meeting of members. This members' statutory right to call for meetings allows members to express their views and to exercise their democratic rights to chart the directions of the company without depending on the board of directors to convene the meeting.

[2] The said statutory right assumes a greater role where the members wish to replace the directors as they do not need to rely on the same directors to call for the necessary meeting.

[3] This judgment deals with the exercise of this statutory right and the attempt by the directors to thwart the members of their statutory right.

BACKGROUND FACTS

[4] Safari Alliance Sdn Bhd ('Safari') holds 11.834% of the issued shares of Tiger Synergy Bhd ('Tiger Synergy').

[5] On 2 January 2020, Safari gave notice to Tiger Synergy of its intention to move resolutions to, inter alia, remove certain directors and to reconstitute the board of directors of Tiger Synergy ('the Safari special notice'). The Safari special notice was given pursuant to s 206(3) of the CA 2016 which provides:

> 206(1) A director may be removed before the expiration of the director's period of office as follows:
>
> (a) ...
>
> (b) In the case of a public company, in accordance with this section.
>
> (2) Notwithstanding anything in the constitution or any agreement between a public company and a director, the company may by ordinary resolution at a meeting remove the director before the expiration of the director's tenure of office.
>
> (3) Special notice is required of a resolution to remove a director under this section or to appoint another person instead of the director at the same meeting.
>
> (4) ...
>
> (5) ...

[6] In the Safari special notice, Safari indicated that the general meeting wherein the resolutions would be moved would be convened on 2 March 2020 ('Safari EGM'). The resolutions stated in the Safari special notice were:

1.	That Dato' Tan Wei Lian be and is hereby removed as Director of the Company with immediate effect.	Ordinary Resolution 1
2.	That Ms Tan Lee Chin be and is hereby removed as Director of the Company with immediate effect.	Ordinary Resolution 2
3.	That Datin Sek Chian Nee be and is hereby removed as Director of the Company with immediate effect.	Ordinary Resolution 3
4.	That Dato' Khoo Seng Hock be and is hereby removed as Director of the Company with immediate effect.	Ordinary Resolution 4
5.	That Dato' Lee Yuen Fong be and is hereby removed as Director of the Company with immediate effect.	Ordinary Resolution 5

6.	That Mr Low Boon Chin be and is hereby removed as Director of the Company with immediate effect.	Ordinary Resolution 6
7.	That Mr Chua Eng Chin be and is hereby removed as Director of the Company with immediate effect.	Ordinary Resolution 7
8.	That Mr Goh Ching Mun be and is hereby removed as Director of the Company with immediate effect.	Ordinary Resolution 8
9.	That Mr Leong Keng Wai be and is hereby removed as Director of the Company with immediate effect.	Ordinary Resolution 9
10.	That Mr Ng Leong Teck be and is hereby removed as Director of the Company with immediate effect.	Ordinary Resolution 10
11.	That Encik Azmi Bin Osman be and is hereby removed as Director of the Company with immediate effect.	Ordinary Resolution 11
12.	That Mr Yeoh Lam Huat be and is hereby removed as Director of the Company with immediate effect.	Ordinary Resolution 12
13.	That if any such person (other than a person named in Ordinary Resolution 8 to 12 above) who might have been appointed as a Director at any time from the date of this EGM and any adjournment thereof, be removed as Director of the Company with immediate effect.'	Ordinary Resolution 13

('the Safari resolutions')

[7] Under s 322(1) of the CA 2016, it is provided that:

(1) Where special notice is required of a resolution under any provision of this Act, the resolution shall not be effective unless notice of the intention to move it has been given to the company at least twenty-eight days before the meeting at which it is moved.

(2) The company is not required to give notice of the proposed resolution received under subsection (1) to the members unless the resolution can be properly moved at a meeting of members required under this Act.

(3) The company shall, where practicable, give its members notice of any such resolution in the same manner and at the same time as it gives notice of the meeting.

(4) Where it is not practicable to give its members notice in accordance with subsection (3), the company shall give its member notice of any such resolution at least fourteen days before the meeting —

(a) by advertising it in one widely circulated newspaper in Malaysia in the national language and one widely circulated newspaper in Malaysia in the English language; or

(b) in any other manner as specified in the constitution.

(5) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called on a date twenty-eight days or less after notice has been given, the notice although not given within the time required by this section is deemed to have been properly given.

[8] There is no dispute that the Safari special notice in this case met the requisite 28 days from the meeting at which the Safari resolutions would be moved. Indeed, from 2 January 2020 (the date the Safari special notice was given to Tiger Synergy) to 2 March 2020 (the scheduled date of the meeting convened to move the Safari resolutions) more than 28 days would have lapsed.

[9] On the same day ie 2 January 2020, Safari also issued the notice of extraordinary general meeting ('Safari notice of EGM') of Tiger Synergy to be held on Monday, 2 March 2020 at Gallery 3, Level 3, New World Petaling Jaya Hotel, Paradigm, 1 Jalan SS7/26A, Kelana Jaya, 47301 Petaling Jaya, Selangor Darul Ehsan ('the Safari venue').

[10] Attached to the Safari notice of EGM are the resolutions and the consents and profiles of the five candidates who sought to be appointed as directors of Tiger Synergy at the Safari EGM ('the five nominated directors'). Again, there is no dispute that the Safari notice of EGM was not in compliance with s 322(3) of the CA 2016.

[11] On 6 January 2020, Safari made an announcement to Bursa Malaysia Bhd ('Bursa') on the convening of the Safari's EGM.

[12] It is pertinent that Tiger Synergy had not suggested that there were any procedural defects or irregularity in the way the Safari EGM was convened. There is no also suggestion that any of the Safari resolutions if carried through at the Safari EGM would be invalid. In other words, the Safari EGM was for all intent and purposes, a valid EGM.

[13] Following from the Safari notice of EGM and the announcement to Bursa, Safari proceeded to make the necessary preparation and arrangement for the Safari EGM.

[14] However, on 20 January 2020, Tiger Synergy issued a letter to Safari ('Tiger Synergy letter') stating, inter alia, that Tiger Synergy's board of directors had decided to convene a competing EGM on Thursday, 20 February 2020 at 9am ('Tiger Synergy EGM') at Crown 1, Level 1, Crystal Crown Hotel, Kuala Lumpur, No 3 Jalan Jambu Mawar, Off Jalan Kepong, 52000, Kuala Lumpur ('Tiger Safari venue'). It is a competing EGM because at the Tiger Synergy

EGM, the resolutions that would be tabled thereto would the Safari resolutions with two additional resolutions ('the additional resolutions'). The additional resolutions were:

> 13. That Mr Ng Hong Ming be and is hereby appointed as Director of the Company with immediate effect.
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> 14. That Encik Marzuki Bin Hussain be and is hereby appointed as Director of the Company with immediate effect.

(the Safari resolutions and the additional resolutions are collectively referred as 'the Tiger Synergy resolutions').

[15] The reason proffered by Tiger Synergy for the Tiger Synergy EGM was that its board of directors had received multiple requests for the appointments and or removal of directors from various shareholders and the Tiger Synergy EGM would facilitate the orderly manner for the tabling of the proposed resolutions for the consideration by the shareholders in order to save time and costs of convening multiple general meetings.

[16] However, it is not in dispute that neither Shia Xze Chyien nor Wai Choo who had purportedly written to the board of directors of Tiger Synergy to consider the appointment of Mr Ng Hong Ming and Encik Marzuki bin Hussain respectively as directors of Tiger Synergy, had given any special notice of intention to Tiger Synergy pursuant to ss 206 and 322(1) of the CA 2016. Neither Shia Xze Chyien nor Wai Choo holds more than 10% of the total issued shares of Tiger Synergy. Neither of them is entitled to board seat in the board of directors of Tiger Synergy.

[17] Safari was asked in the Tiger Synergy letter to consider withdrawing the Safari EGM 'to avoid confusion amongst the shareholders of Tiger Synergy'. Safari was given the close of business the next day to revert. However, according to Safari, it only received the Tiger Synergy letter on 21 January 2020.

[18] On 21 January 2020, Safari informed Tiger Synergy that it was not withdrawing the Safari EGM. Instead, Safari demanded that Tiger Synergy withdraws the Tiger Synergy EGM instead.

[19] On 21 January 2020, Tiger Synergy issued its notice of general meeting for the Tiger Synergy EGM to be convened on Thursday, 20 February 2020 at 11am ('the Tiger Synergy notice of EGM'). In the Tiger Synergy notice of EGM, Tiger Synergy attached the Tiger Synergy resolutions.

[20] Thereafter, on 3 February 2020, two announcements were made by Tiger Synergy's board of directors on the Tiger Synergy EGM to the members of the company.

[21] On 7 February 2020, the five nominated directors for the Safari's EGM wrote to state that their consent to be nominated for the appointment of directors was only for the Safari's EGM. It was contended that 29 February 2020 is the last date for Tiger Synergy to make its quarterly announcement for the results for the quarter ended 31 December 2019. It is for this reason that the five nominated directors do not wish to be appointed as director prior to 29 February 2020 as they do not wish to assume the obligations and or responsibility for the quarterly announcement.

[22] On 11 February 2020, Safari filed an action under OS No WA-24NCC-67–02 of 2020 ('OS 67') seeking, inter alia, a declaration that the Tiger Synergy notice of EGM is invalid, a declaration that the Tiger Synergy EGM, if convened, would be invalid and void and an injunction to restrain Tiger Synergy from taking any further steps in respect of the Tiger Synergy notice of EGM. On the same day, Safari filed an interlocutory application under encl 2 in OS 67 seeking to restrain the Tiger Synergy EGM.

[23] Tiger Synergy had, in turn, filed an action under OS No WA-24NCC-74–02 of 2020 ('OS 74') on 14 February 2020 seeking, inter alia, a declaration that Safari notice of EGM to convene the Safari EGM is redundant, invalid and or null and void and for an order that Safari be restrained from proceeding with the Safari EGM.

[24] Both the OS 67 and the application under encl 2 thereto together with the OS 74 were heard together on an urgent basis.

MY DECISION

[25] In *Seacera Group Berhad v Dato' Tan Wei Lian & Ors* [2019] MLJU 470; [2019] 4 AMR 491 at p 513, paras 92–93, I made the following comments on s 310(b) of the CA 2016:

> [92] Every shareholder of a company has a right subject to the statutory prescribed procedures and requirements, to call for an extraordinary general meeting of a company under the CA. A shareholder's right to convene a general meeting under s 310(b) of the CA is one of the key rights provided by law to shareholders to marshal all shareholders of a company together at an appointed date, place and time to provide the opportunity to the shareholders to deliberate and to resolve, if deem fit, on proposals properly tabled before them that may affect the directions of the company. It is an essential right to invoke the internal democratic process of the company.
>
> [93] The court should be slow in granting injunction preventing shareholders from holding general meetings, especially when such meetings are the only way in which shareholders can put certain resolutions before the members which they think are for the benefit of the company, even if these resolutions involve the removal of the incumbent directors.

[26] In my judgment, once a members' meeting is convened under s 310(b) of the CA 2016, the company should not be taking any action to interfere with the meeting. This is all the more so where there are already steps put into motion by the members to convene the meeting, for example, where the notices and announcement of the meeting had already been sent out and or published. The company must show compelling and or good reasons when it seeks to convene a competing meeting either prior to or subsequent to the members' meeting.

[27] A competing meeting is one which involves tabling before the members identical and or substantially identical resolutions as the members' meeting.

[28] The onus is on the company to show that the exercise of its power to convene the competing meeting had not been made mala fide or for an improper purpose. That the court possesses supervisory oversight over the exercise of powers by the directors of the company when convening a general meeting is established (see *Cannon v Trask* (1875) LR 20 Eq 669; *Adams v Adhesives Pty Ltd* (1932) 32 SR (NSW) 398); *Ariadne Australia Ltd, Re; sub nom Ariadne Australia Ltd, Re; Votraint No 255 Ltd v Capp (ACSR), Ariadne Australia Ltd, Re; Votraint No 255 Ltd v Capp (ACLC)* (1990) 2 ACSR 791).

[29] Once a general meeting has been properly convened by the shareholder under s 310(b) of the CA 2016, there is an overriding duty on the directors of the company not to deliberately call another competing general meeting on a date, especially an anterior date to the meeting that had been called, that would result in confusion and or inconvenience to the shareholders and or disrupting the convened general meeting and or interfering with the member's statutory right to convene a meeting of members at a date, time and venue convenience to the said member. The calling of such a competing meeting unless for compelling reasons, would be considered as improper and by reason thereof invalid.

[30] In the present case, if Tiger Synergy had arranged the Tiger Synergy EGM to be held immediately after the Safari EGM, there will be little doubt that such a meeting on a substantially same resolutions to be held immediately after the Safari EGM would be considered as an improper exercise of powers by Tiger Synergy's board of directors unless compelling reasons are proffered. Such a position would be akin to the circumstances in *Howard v Mechtler* (1999) 30 ACSR 434 where Justin Austin held:

> In the present case it is true that the meeting of 30 December 1998 followed shortly after a meeting on substantially the same subject matter. In some circumstances this sequence could itself be sufficient to establish an intention to harass and consequently impropriety of purpose.

[31] Would the position be any different if the company had arranged for the competing meeting to be held on a date anterior to the Safari EGM as in the present case? Would the case be further aggravated by an application made by the company to invalidate the members' meeting on the ground that the said meeting has been rendered redundant by the competing meeting?

[32] To my mind, it is an even more compelling case of an abuse of power by the board of directors of the company when it seeks to convene a competing meeting on a date anterior to the members' meeting. The position is further compounded when the company moved to invalidate the members' meeting by reason of its competing meeting.

[33] In the present case, not only had Tiger Synergy deliberately called for a competing meeting on a date anterior to the Safari EGM, it also filed the OS 74 to invalidate the Safari EGM on the ground that the same is rendered redundant or invalid premised on the Tiger Synergy EGM.

[34] I find that Tiger Synergy's board of directors' decision to call the competing Tiger Synergy EGM has the effect of taking away or rendering impotent Safari's exercise of its statutory right under s 310(b) of the CA 2016 to convene a members' meeting. By convening the Tiger Synergy EGM prior to the Safari EGM, Tiger Synergy has also interfered and frustrated Safari's statutory right to convene the members' meeting at a date, time and venue of its choosing. Put it another way, by calling the Tiger Synergy EGM, Tiger Synergy had effectively hijacked Safari EGM and interfered with Safari's statutory right.

[35] It is my judgment that the decision by Tiger Synergy to call the Tiger Synergy EGM is a clear and blatant improper exercise of powers by its board of directors. By calling for the Tiger Synergy EGM, the board of directors has caused:

(a) confusions among the members as to the proper meeting, if any, to attend. Tiger Synergy itself was fully aware that by calling its competing Tiger Synergy EGM, it would result in confusion among the members. This is clear from the Tiger Synergy letter where Safari was asked to consider withdrawing the Safari EGM 'to avoid confusion amongst the shareholders of Tiger Synergy', a confusion created by Tiger Synergy;

(b) the competing Tiger Synergy EGM unnecessarily put to waste the costs that had been expended by Safari in arranging for the Safari EGM. Such costs are not recoverable from Tiger Synergy. If the company is permitted to render a members' meeting redundant or invalid by calling a competing meeting prior to the members' meeting, this will deter members from exercising their statutory rights as the costs and expenses

A that the members will incur can easily be put to waste by the company as a strategy to frustrate attempts to remove its directors;

(c) the Tiger Synergy EGM will result in Tiger Synergy having to incur costs and expense to organise the meeting when it was wholly unnecessary to do so in the light of the Safari EGM. Surely, this cannot be in the interests of the members or its creditors;

(d) by calling the Tiger Synergy EGM earlier, Tiger Synergy had frustrated or interfered with the Safari EGM as the five nominated directors have indicated that the consent to their appointment as directors was only for the Safari EGM which would be held only after the company's quarterly financial announcement. This means that the five nominated directors will not be offering themselves for appointment at the Tiger Synergy's EGM, thus frustrating Safari's objective of appointing new directors at the Tiger Synergy EGM; and

(e) the Tiger Synergy EGM not only called for the members to meet earlier on 20 February 2020 but also at a different venue and time from the Safari EGM.

[36] The reason latched on by Tiger Synergy for the Tiger Synergy EGM, namely, that it wanted to 'save time and costs from convening multiple EGMs ... to accommodate all multiple resolutions for the appointment and or removal of directors from various shareholders', is with respect disingenuous and far from compelling.

[37] There are only two additional resolutions apart from the Safari resolutions to be tabled at the Tiger Synergy EGM. These two resolutions were mooted by Shia Xze Chyien and Wai Choo who were not substantial shareholders and who could not requisition or call for a general meeting at all. Each of them had merely requested Tiger Synergy's board of directors to consider the appointment of their respective nominees as a director. The company had no legal obligations to table such resolutions before the members at all.

[38] There is hardly any urgency nor necessity for Tiger Synergy to convene a general meeting to meet these requests let alone to disrupt the Safari EGM by calling a competing meeting at a date anterior to it and to take the further step to invalidate the Safari EGM based on the Tiger Synergy EGM.

[39] The aforesaid, to my mind, are sufficient grounds for this court to hold that the board of directors of Tiger Synergy in calling for the Tiger Synergy EGM had indeed exercised their powers for an improper purpose and that the Tiger Synergy notice of EGM was made mala fide rendering the convening of the Tiger Synergy EGM invalid. In holding the aforesaid, I am fortified by the

following passage by Cooper J in *Ariadne Australia Ltd, Re; sub nom Ariadne Australia Ltd, Re; Votraint No 255 Ltd v Capp (ACSR), Ariadne Australia Ltd, Re; Votraint No 255 Ltd v Capp (ACLC)* (1990) 2 ACSR 791 at p 794 where he said:

> I do not accept that to call the meeting as contemplated is not to act honestly in the interests of Ariadne or its members or creditors. Nor do I accept that the evidence discloses that the respondents are acting improperly in using their positions in their own interests. The respondents by their announcement to the Australian Stock Exchange and their instructions to Mr. Standish have evinced an intention to discharge their duties as directors and this has informally been communicated to shareholders through the Stock Exchange and the financial press. *The position may have been otherwise if the respondents had failed to act and allowed the applicant to call a meeting and then sought to convene a second competing meeting. However, that is not this case.* (Emphasis added.)

[40] Quite apart from the aforesaid, I hold that the Tiger Synergy EGM ought to be restrained as there was no special notice of intention to move the Tiger Synergy resolutions at the Tiger Synergy EGM as required under s 206(3) of the CA 2016.

[41] I am not persuaded by the submission of learned counsel for Tiger Synergy that the company can rely on the Safari special notice for the Tiger Synergy EGM. This is because the Safari special notice expressly stated that the Safari resolutions that are intended to be move would be moved at the meeting convened on 2 March 2020 at the Safari venue at 9am.

[42] As it was a special notice of intention given for only the meeting convened on 2 March 2020 at the Safari venue at 9am, the Safari special notice cannot in law be relied upon by the board of directors of Tiger Synergy to move the Tiger Synergy resolutions at a meeting fixed on a different date, venue and time. The Tiger Synergy resolutions to be tabled at the Tiger Synergy EGM are also not identical to the Safari resolutions given in the Safari special notice.

[43] Accordingly, under s 322(1) of the CA 2016, the Tiger Synergy resolutions would not be effective as the same would not be properly moved at the Tiger Synergy EGM rendering the said meeting futile and a waste of the company resources.

[44] I therefore grant an order in terms of prayers 1 and 2 of encl 1 in OS 67 and order in terms of prayer 1 and 2 of encl 2. The defendant to pay the plaintiff costs fixed at RM15,000. I dismissed encl 1 of OS 74 with costs fixed at RM15,000.

OS 67 granted and OS 74 dismissed.

Reported by Ahmad Ismail Illman Mohd Razali